IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR.

S.B. Civil Revision Petition No.30/2007

Ummed Singh Sushila Vs. Ramesh Kumar Malpani

09.04.2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Anil Upman for the petitioner.
Mr.S. Kasliwal for the respondent.

REPORTABLE

Heard learned counsel for the parties.

2. This revision petition is directed against the order dated 27.9.2006 passed by the learned trial court rejecting the application under Order 7 Rule 11 C.P.C. filed by the present petitioner on the ground that the application for eviction filed before the Rent Tribunal under the provisions of Rajasthan Rent Control Act, 2001 (henceforth to be referred to as 'the Act', for short) was not maintainable.

3. Mr. Anil Upman, the learned counsel for the petitioner, while arguing this case drew the attention of the Court towards Section 3(viii) of the Act, which is reproduced below for ready reference:-

> 3. Chapters II and III not to apply to certain premises and tenancies – Nothing contained in Chapters II and III of this

Act shall apply -

(i) .....
(ii) .....
(iii) .....
(iv) .....
(v) .....
(vi) .....
(vii) ....

(viii) to any premises belonging to such religious, charitable or educational trust or class of such as may be specified by the State Government by notification in the Official Gazette.

4. He, therefore, contended that since the petitioner-tenant was carrying the charitable work as a charitable trust in the suit premises in the name and style of Ummed Singh Sushila Devi Memorial Trust, the Chapters II and III would not apply to such a tenancy and, therefore, the application filed by the respondent-landlord for eviction before the Tribunal under the Act of 2001 was not maintainable and the learned trial court has erred in rejecting the petitioner's application under Order 7 Rule 11 C.P.C.

5. Countering this submission, Mr. Kasliwal, the learned counsel for the respondent pointed out that clause (viii) of Section 3 of the Act clearly stipulates that Chapters II and III would not apply to any premises ***belonging to such religious, charitable or***

educational trust or class of such trusts as may be specified by the State Government by notification. He, therefore, contended that since admittedly the suit premises in question do not belong to the petitioner-tenant, there is no question of applying clause (viii) of Section 3 of the Act to the petitioner in the present case. He also submitted that Order 7 Rule 11 C.P.C. as such does not apply because the provisions of the C.P.C. are intended to apply the Rajasthan Rent Control Act only in a limited manner as specified in Section 21 of the Act, which deals with the procedures and powers of the Rent Tribunal and the Appellate Rent Tribunal and the powers of the Civil Courts while trying a suit or an appeal in respect of following matters namely:-

> (a) summoning and enforcing the attendance of any person and examining him on oath;
>
> (b) requiring the discovery and production of documents;
>
> (c) reviewing its decision;
>
> (d) issuing commissions for the examination of witnesses or documents;
>
> (e) dismissing petition for default or deciding it ex-parte;
>
> (f) setting aside any order of dismissal of any petition for default or any order passed by ex-parte;
>
> (g) bringing legal representatives on record; and
>
> (h) any other matter as may be prescribed

6. He also submitted that the very object of this enactment is to provide for expeditious disposal of rent eviction matters by constitution of separate Tribunals and providing for procedures therein in the Act itself.

7. Mr. Anil Upman also submitted that the trial court while holding that since the petitioner's trust was not notified by the State Government as such under clause (viii) and only on that count, this clause would not apply, is an error in law because the words “as may be specified by the State Government by notification in the official Gazette” are attached to only the words “class of such trusts”, which are separated in clause (viii) by the word “or”. Elaborating his submission, he says that if all such religious, charitable or educational trusts were also intended to be specified by the State Government, the word “and” would have been there in this provision instead of word “or”.

8. This contention of Mr. Upman is totally fallacious and wrong on the face of it. A plain and bare perusal of clause (viii) excludes the application of clause (viii) to the trust like the petitioner because in the opinion of this Court, this clause would apply only if

premises belonged to such religious, charitable or educational trust or class of trust specified by the State Government. In other words, the non-application of Chapters II and III of the said Act by virtue of clause (viii) would be there only if the premises are owned by or otherwise belonged to such religious, charitable or educational trust or class of such trusts as may be specified by the State Government by notification in the Official Gazette. This is more than clear that all these trusts to which the State Government intends not to apply Chapters II and III would be specified by the State Government, therefore, the contention of the learned counsel for the petitioner that the application for eviction at the instance of respondent-landlord was not maintainable, is misconceived and liable to be rejected.

9. The learned counsel for the petitioner also relied upon the judgment of this Court delivered in the case of **Indian Red Cross Society Vs. Manohar Jaswani reported in 2006(3) WLC 513** wherein whiling dealing with the clause (v) of Section 3 of the Act, the Court held that the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 applies to Indian Rd Cross Society. The said judgment relied upon by the learned counsel for the petitioner is distinguishable, because clause (v) clearly reads, “to any premises ***belonging to or let out*** by any body corporate constituted

by a Central Act or a Rajasthan Act". Since the Indian Red Cross Society was a body corporate under the Central Act and the words "let out" were also there in clause (v), but are not there in clause (viii), the provisions of Act of 2001 were not found applicable in that case. The case in hand is distinguishable and in the opinion of this Court, the trial court was perfectly justified in holding that until and unless such religious, charitable or educational trust or class of such trusts as may be specified by the State Government is so specified by a notification in the Official Gazette, there is no question of excluding the application of this Act or Chapters II and III.

10. Therefore, this Court is not inclined to interfere in the impugned order passed by the trial court rejecting the application under Order 7 Rule 11 C.P.C. The revision petition is devoid of any merit and the same is, therefore, dismissed. No order as to costs.

[**Dr. Vineet Kothari**],**J.**

S.S.
Jr.P.A.